

JATAAGUOS

Sentence

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

19 CR 39-1 (JMF)

5 SHAO JUN GUO,

6 Defendant.

7 -----x

8 New York, N.Y.  
9 October 29, 2019  
3:30 p.m.

10 Before:

11 HON. JESSE M. FURMAN,

12 District Judge

13  
14 APPEARANCES

15 GEOFFREY S. BERMAN

United States Attorney for the  
Southern District of New York

16 ELIZABETH A. ESPINOSA

17 RYAN B. FINKEL

Assistant United States Attorney

18 SARAH M. SACKS

19 Attorney for Defendant Guo

20 BENNETT M. EPSTEIN

Attorney for Defendant Guo

21  
22  
23 ALSO PRESENT: NANCY WU, Cantonese Language Interpreter

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1 (Case called)

2 MS. ESPINOSA: Good afternoon, your Honor.

3 Elizabeth Espinosa and Ryan Finkel, for the  
4 government. We're joined at counsel table by Postal Inspector  
5 Jeff Goble.

6 MR. EPSTEIN: Good afternoon.

7 Bennett Epstein, with my assistant, Sarah Sacks, who  
8 will be handling the proceedings today and of course, with our  
9 client, Shao Guo.

10 THE COURT: Good afternoon.

11 Sorry to keep you waiting. There were some elevator  
12 issues.

13 We are joined by a Cantonese interpreter, I  
14 understand, Ms. Wu.

15 THE INTERPRETER: Yes, your Honor.

16 THE COURT: Good afternoon to you.

17 Mr. Guo, are you able to understand the interpreter?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: All right. If at any point during the  
20 proceedings you have any trouble understanding, I want you to  
21 let me know right away so that we can take care of the problem  
22 immediately. OK?

23 THE DEFENDANT: OK.

24 THE COURT: All right. We're here for the purpose of  
25 sentencing. In preparation for today's proceeding I have

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1 reviewed the presentence report dated September 10, 2019. I've  
2 also received and reviewed the following additional  
3 submissions:

4 First, the defendant's submission dated October 15th,  
5 as well as the attachments to that submission, namely, the  
6 letters addressed to me and translated from Chinese from the  
7 defendant, from his wife and his mother and his siblings, a  
8 brother and a sister I believe.

9 I also viewed a video that was submitted by the  
10 defense and reviewed the government's submission dated  
11 October 22, 2019.

12 First, have each of you received the other's  
13 submissions?

14 MS. ESPINOSA: Yes, your Honor.

15 MS. SACKS: Yes, judge.

16 THE COURT: All right. And are there any additional  
17 submissions that I should have received besides what I've just  
18 mentioned?

19 MS. ESPINOSA: No, your Honor.

20 MS. SACKS: Not for the defense.

21 THE COURT: All right. Very good. Just to be clear,  
22 obviously, there's no means to file the video on the docket.  
23 So that is something that you should maintain in your  
24 possession. It is considered and is now part of the record but  
25 I won't maintain it as part of the official docket. You'll

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1 keep possession as you would an exhibit at trial.

2 MS. SACKS: Yes, judge.

3 THE COURT: All right. Ms. Espinosa, I suppose that  
4 the tax authorities are technically victims within the meaning  
5 of Crime Victims' Rights Act and therefore entitled to notice  
6 of the proceedings. Have they been provided such notice?

7 MS. ESPINOSA: Yes, your Honor, they have been  
8 notified by law enforcement and they are aware.

9 THE COURT: All right. Very good. Mr. Sacks, have  
10 you read the presentence report?

11 MS. SACKS: I have, your Honor.

12 THE COURT: Have you discussed it with your client?

13 MS. SACKS: We have.

14 THE COURT: Putting aside the guidelines for one  
15 moment, any objections with respect to the factual accuracy of  
16 the report?

17 MS. SACKS: No, judge.

18 THE COURT: All right. Mr. Guo, have you reviewed the  
19 presentence report?

20 THE DEFENDANT: I have.

21 THE COURT: Was it translated for you into your native  
22 language?

23 THE DEFENDANT: Yes.

24 THE COURT: And did you discuss it with your lawyers?

25 THE DEFENDANT: Yes, I did.

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1           THE COURT: Did you have enough time to do that and to  
2 talk to them about anything that you wished to bring to my  
3 attention in connection with your sentencing? Did you have  
4 enough time to do that?

5           THE DEFENDANT: Yes, I did.

6           THE COURT: All right. Ms. Espinosa, did you review  
7 the presentence report?

8           MS. ESPINOSA: Yes, your Honor.

9           THE COURT: And putting aside the guidelines, well,  
10 any objections with respect to the factual accuracy?

11          MS. ESPINOSA: No, your Honor.

12          THE COURT: Hearing no objections, I will adopt the  
13 factual recitations set forth in the report which will be made  
14 part of the record in this matter and kept under seal. In the  
15 event of an appeal, counsel on appeal may have access to the  
16 sealed report without further application to me.

17          Turning then to the United States Sentencing  
18 Guidelines, as counsel certainly know, I'm not bound by the  
19 guidelines but I do have to consider the applicable guidelines  
20 in determining and imposing an appropriate sentence. I must  
21 therefore, accurately calculate the guidelines range. In this  
22 case there was a plea agreement in which the parties stipulated  
23 to a particular calculation of the sentencing guidelines. My  
24 understanding is that while it may be that the way in which the  
25 loss was calculated at that time, technically, I think wrong

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1 and therefore, different than what probation did that  
2 ultimately the calculation in the presentence report is  
3 consistent with the parties' agreement.

4 Is that correct?

5 MS. ESPINOSA: Yes, your Honor. While the loss amount  
6 was incorrectly calculated because it included federal excise  
7 tax and New York sales tax, once those taxes were deducted from  
8 the loss amount, the guidelines range did not change because  
9 the loss is still between \$1.5 and \$3.5 million.

10 THE COURT: All right. Ms. Sacks, do you agree?

11 MS. SACKS: Yes, judge.

12 THE COURT: All right. So based on the parties'  
13 agreement, the absence of any objection and my independent  
14 evaluation of the guidelines, I accept and adopt the guidelines  
15 calculations set forth in the presentence report. That is  
16 using the November 2018 edition of the Sentencing Guidelines  
17 and find the total offense level is 19, criminal history  
18 category is one, the guideline range is 30 to 37 months  
19 imprisonment, supervised release range is one to three years  
20 and the fine range is \$10,000 to \$100,000.

21 In the plea agreement both parties agreed not to seek  
22 a departure from that range. That is, within the meaning of  
23 the guidelines and as to distinct from what has come to be  
24 known as a variance.

25 Is that correct?

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1 MS. ESPINOSA: Yes, your Honor.

2 MS. SACKS: Yes, judge.

3 THE COURT: I have, nevertheless, considered whether  
4 there are any grounds for a departure as distinct from a  
5 variance and do not find that there are grounds that would  
6 support departure here.

7 With that, I'll hear first from counsel beginning with  
8 the government and then from Mr. Guo, if there is anything that  
9 he wishes to say before I sentence him.

10 I have read your submissions. So in that regard you  
11 don't need to report repeat what you've already told me in  
12 writing but whatever you want to tell me that you think would  
13 be helpful would you great and then I did have a couple  
14 questions that I think I would address to each side. But why  
15 don't you start Ms. Espinoza.

16 MS. ESPINOSA: Thank you, your Honor.

17 As we set forth in our submission, the government does  
18 think that a guideline sentence here is appropriate. The  
19 defendant's criminal conduct was serious. It continued for a  
20 long period of time and resulted in substantial tax losses to  
21 the government. That being said, I am happy to address your  
22 Honor's questions and can address anything else further at that  
23 point.

24 THE COURT: Sure. So one question is, how long it did  
25 in fact last. There's a suggestion in your sentencing sentence

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1 that you conservatively calculated the loss and didn't include  
2 earlier conduct even though you have reason to believe that it  
3 was going on longer than you were able to calculate. What's  
4 your understanding of how long it was going on?

5 MS. ESPINOSA: Your Honor, my understanding is that  
6 the government's evidence, including witness testimony, would  
7 put the conduct at the beginning, at least several years before  
8 2017, which is when our record that have allowed to us to  
9 calculate the lost amount began.

10 If I may have one moment, your Honor?

11 (Pause)

12 MS. ESPINOSA: Your Honor, our evidence.  
13 Indicates that the defendant's conduct began in at least 2015.  
14 However, because we wanted take a conservative position on the  
15 loss amount that is backed up by our more specific documentary  
16 evidence, we restricted it to the loss that we had that's based  
17 on the records as we laid out in our submission.

18 THE COURT: All right. Second, the defendant in his  
19 sentencing submission represented that he basically was paid  
20 only a few thousand dollars, at most, a month.

21 Do you have any reason to believe otherwise? Any  
22 evidence on that score? What's your view of that?

23 MS. ESPINOSA: Your Honor, the government doesn't have  
24 specific documents or records indicating how much he was paid  
25 for this. It's our understanding that the defendant was doing



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1 this to make money and continued doing so which leads to an  
2 inference that he was making at least enough money to make it  
3 worth continuing.

4 That being said, it's not entirely relevant to the  
5 guidelines how much he did or to the loss amount how much he  
6 did make or how much he profited. That's related to forfeiture  
7 but not to how the loss is calculated here which is driven by  
8 the tax laws. So I do not ask have specific evidence that  
9 would necessarily refute what he has said.

10 THE COURT: All right. I mean, I agree based on the  
11 guidelines but it doesn't directly relate to the loss amount  
12 for purposes of the guidelines. Part of why I ask is just  
13 trying to get a sense of where he fits in the hierarchy here  
14 and sort of his level of culpability for the offense. It  
15 sounds, I mean in essence it seems like he was acting as a  
16 moderately salaried employee, somebody who was essentially  
17 receiving the cigarettes from someone else, doing the work of  
18 distributing them and then passing the money to someone else  
19 but keeping some portion of it for himself.

20 Is that accurate?

21 MS. ESPINOSA: That's not my understanding, your  
22 Honor. The defendant was smuggling cigarettes into the United  
23 States. He was placing orders from China and receiving those  
24 cigarettes in the U.S. He was then selling them on to other  
25 customers. Our evidence does not indicate that the defendant

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1 was working for anyone, so to the extent he was being paid by  
2 his customers to whom he was selling the cigarettes question.

3 And in terms of the hierarchy of loss amount in this  
4 case, the defendant falls approximately in the middle. There  
5 are I believe two defendants who were responsible for less loss  
6 amounts and three who are responsible for more of the original  
7 six defendants that were charged at the same time in January.

8 THE COURT: All right. So that makes him sound more  
9 like a wholesaler. Is that a more accurate description of how  
10 you would describe his role here?

11 MS. ESPINOSA: That's right, your Honor.

12 And I would say that this is not really analogous to a  
13 hierarchical type organization. The different defendants  
14 played different roles in terms of how they fit into the  
15 economic distribution of the cigarettes but the defendant  
16 was not to our understanding working as an employer.

17 THE COURT: So you'll pose these questions to the  
18 defense as well. Based on that description, one would think  
19 that he made whatever profit he made in the difference of what  
20 he paid for the cigarettes and what he got for them from the  
21 retailers that he was selling them.

22 MS. ESPINOSA: That's my understanding, your Honor.  
23 That is what the government's evidence indicates.

24 THE COURT: OK. And this follows up on something you  
25 just said, but what I'm a little confused of how the defendants

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1 in this case all relates to one another. I'm not suggesting  
2 that they were improperly charged together but it seems a  
3 little bit more also loose knit. And while you described it at  
4 various times and various ways as a \$30 million sort of  
5 contraband cigarette trafficking ring, it seems a little less  
6 coherent than that. And I know that you are not attributing  
7 \$30 million to Mr. Guo but I guess I am trying to get a sense  
8 of whether he had any knowledge of the other defendants, the  
9 scope of the conduct overall, just sort of how they all relate.

10 MS. ESPINOSA: Your Honor, the defendant was supplying  
11 the cigarettes sold by several other defendants in this  
12 particular case. He was one of their primary suppliers of  
13 cigarettes imported from China and was certainly aware that the  
14 other defendants were engaged in selling off those cigarettes  
15 to either retail customers or to other wholesalers.

16 As I said a minute ago, I believe, your Honor, there  
17 was no strict hierarchy but the defendants were working  
18 together, some acting as retailers and other as wholesalers and  
19 importers and were regularly interacting with each other in  
20 that regard.

21 THE COURT: OK. And then I think lastly, although I  
22 may have some follow-up questions in due course, restitution  
23 and forfeiture I have a proposed order of restitution here and  
24 it doesn't seem to have a schedule of the victims.

25 MS. ESPINOSA: I will provide that to the Court

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1 separately after this proceeding, your Honor.

2 THE COURT: OK. Is it different than what is set  
3 forth in the presentence report, I think at page 23?

4 MS. ESPINOSA: One moment, your Honor.

5 THE COURT: Hold on one second.

6 MS. ESPINOSA: No. Your Honor, that is the correct  
7 schedule of victims. Can I provide the addresses to the Court  
8 in terms of where any payments would be directed?

9 THE COURT: All right. And normally, the list would  
10 be filed under seal. Is that necessary here given that they're  
11 presumably tax authorities?

12 MS. ESPINOSA: I don't believe so, your Honor. They  
13 are tax authorities.

14 THE COURT: All right. So if you could get that to us  
15 sooner rather than later, then I would attach it to the order  
16 assuming there is no objection to my signing and docketing it.

17 As for forfeiture, can you explain to me what's going  
18 on there? I gather you've modified your position from the time  
19 of the plea and I have a proposed consent order here.  
20 Although, it doesn't seem to have been signed by the defendant  
21 or counsel.

22 MS. ESPINOSA: Yes, your Honor.

23 The government believes that it is an issue of how it  
24 was calculating forfeiture after the plea. We originally  
25 provided a forfeiture order in the full amount of tax loss. On

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1 further consideration, we determined that was a proper  
2 calculation in this case. We are therefore seeking forfeiture  
3 of the gross proceeds of the defendant's cigarette trafficking.  
4 We determined that number by looking at all of our evidence and  
5 our evidence indicates that there is a range of profits for the  
6 sale of Chinese cigarettes which is what the defendant was  
7 providing.

8 Those range from \$20 a carton to about \$35 a carton.  
9 Again, we're trying to be conservative here, so we went with  
10 the low end of the scale at \$20 a carton. We applied that to  
11 the number of cartons attributed to the defendant. Based on my  
12 record, it was for the loss amount and the result is a gross  
13 profit of I believe slightly over \$800,000 in the amount in  
14 order.

15 THE COURT: All right. That's the amount you are now  
16 seeking?

17 MS. ESPINOSA: Yes, your Honor.

18 THE COURT: All right. Thank you very much.

19 Ms. Sacks, why don't we just deal with the  
20 housekeeping issues first. Any objection to my signing the  
21 order of restitution that the government has submitted.

22 MS. SACKS: No, judge.

23 THE COURT: What about the order of forfeiture?

24 MS. SACKS: Same.

25 THE COURT: I don't think you've signed or your client

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1 has signed this.

2 MS. SACKS: Right. We just got it as the proceeding  
3 started. So we haven't had a chance to get --

4 THE COURT: Have you been able to go over it with him?

5 MS. SACKS: We have not.

6 THE COURT: Can you take a couple minutes with the  
7 interpreter and do it so that so we can just take care of that?

8 MS. SACKS: Sure.

9 (Pause)

10 THE COURT: Thank you, Ms. Sacks.

11 I suppose you can address the questions that I posed  
12 to Ms. Espinosa and whatever you want to say to me.

13 MS. SACKS: Yes, judge.

14 Certainly, if I leave anything out, I'm happy to  
15 answer them after my presentation.

16 We appreciate all the time and focus that the Court  
17 has spent on reviewing our submissions, including our written  
18 submission and all the families' letters and the video. As you  
19 can tell, I certainly didn't go to film school and making a  
20 challenged to my personal technological capability and getting  
21 it even in getting it to your chambers. So appreciate your  
22 chambers having worked with me on that.

23 But we thought that a video was particularly apt in  
24 this case since we didn't know if we could accurately convey  
25 what we have come to learn about Shao Jun and his family.

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1 They're incredibly humble, modest and supportive and it's just  
2 a small example of that. His brother and sister each who have  
3 full-time jobs in their own families, have been by Shao Jun's  
4 side pretty much every step of the way since his arrest and  
5 have been to practically every meeting that we have had with  
6 our client, and that speaks for their love and their devotion  
7 for their brother who they know in turn has sacrificed so much  
8 for them and because of love, because of his love and devotion  
9 to them and to his parents.

10 As you can see his siblings and his mother and his  
11 wife and his young daughter are here in the courtroom today.  
12 I'd like to introduce you to them. You may recognize them from  
13 the video. Sui Wa Fang who is Shao Jun's wife is here in the  
14 second row, as is his daughter Celine, who is almost 20 months  
15 old. His mother Gee Fang Wang is here. Unfortunately, his  
16 father is not physically well enough to be here today but also  
17 his brother and his sister Shan Dan Kwok, his sister and Chow  
18 Jon Kwok, his brother are here.

19 The sentence that your Court gives to Shao Jun is  
20 important to and not affects not only him but his entire  
21 family. For all the reasons that we've provided in our  
22 submissions and will provide to you here today in court, we ask  
23 you to sentence Shao Jun to probation, including a significant  
24 term of home confinement and/or other conditions that are set  
25 forth in Section 5B1.3(e).

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1           We respectfully submit that such a sentence is one  
2           that is significant but not greater than necessary to serve the  
3           purposes of sentencing under Section 3553(a). It is also  
4           adequate punishment for someone like Shao Jun who poses no  
5           threat to the community and would not benefit from additional  
6           imprisonment and because his wife and young daughter  
7           desperately need him at home.

8           We've provided in our written submissions several  
9           factors that we believe support this conclusion. And that  
10          includes the mitigating circumstances of his life that also  
11          speak volumes about his good character. I'm not going to go  
12          into all of them in great detail because we know your Honor has  
13          read our submission. But just for the record, this includes  
14          him dropping out of school in middle school because his parents  
15          couldn't afford to send all three kids to school and so that he  
16          would live away from home and work in a factory six days a  
17          week, 14 hours a day performing hard manual labor and sending  
18          practically all of that little money that he made back to his  
19          family, first to his parents and then when they left China to  
20          his grandmother.

21          Shao Jun worked tirelessly in the factories for over  
22          ten years and with sending all of his earnings to his loved  
23          ones and he did so without a complaint. We believe that this  
24          speaks volumes about his strong character and his work ethic.

25          Then the sacrifice he made with the visas that they're



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1 relatives in the United States ha applied for came from ten  
2 years after they were submitted so that Shao Jun was over the  
3 age of 22 when he could come to the U.S. with his parents under  
4 a family visa. He continued to put others before himself. His  
5 family came to the U.S. to start new lives without him while he  
6 remained in China still working in the factories and now at  
7 this time is the primary caregiver for his grandmother who is  
8 elderly and disabled. He continued to care for his grandmother  
9 until she passed away at the age of 92 ears old. During her  
10 final years he cared for her full-time.

11 He then continued to put his own life on hold as he  
12 patiently waited to be reunited with his family. He refrained  
13 from getting married and making any permanent ties in China  
14 since if he did get married he would have to start the visa  
15 process all over again.

16 Now as a side note, when Shao Jun was asked in his  
17 probation interview what was the hardest thing that had ever  
18 happened to him in his life before this, his answer was not any  
19 of these other hardships that he's had to endure, but to him  
20 what it was was when his grandmother died at the age of 92.  
21 And he was genuine when he said that. This is how much his  
22 family means to him. It's how humble he is and it shows how he  
23 has put everyone else first.

24 When his visa application was finally granted ten  
25 years after he applied for it on his own and he finally came to

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1 the U.S. to reunion with his family and although this is what  
2 they were all waiting for, it was far from easy. By the time  
3 he immigrated he was in his early 30s and he struggled to adopt  
4 to life here. He doesn't speak the language. He had only a  
5 middle school education. Work was hard to come by. He did  
6 work in construction but that too was hard on him physically  
7 since he suffers from arthritis probably as a result of the  
8 years of manual labor.

9 Now after almost ten years in the United States he was  
10 introduced to his now wife who still lived in China. They  
11 married in 2014 when Shao Jun was 42-years-old. This was  
12 considerably older and it's typical in his culture to get  
13 married. And in fact, Shao Jun and his family have joked that  
14 this was the age to become a grandfather, not to get married.  
15 Then he waited almost two years for his wife to be able to join  
16 him in the United States and after they had their daughter.  
17 Having his own family after all of the waiting, after all of  
18 the separation had extra special meaning to Shao Jun and his  
19 family.

20 Again, these circumstances which we submit should  
21 certainly be mitigating, they also helped to explain how Shao  
22 Jun came to sell untaxed cigarettes. He was at a disadvantage  
23 when he came to the U.S. And on top of that, he is very  
24 introverted as we have come to learn, a man of very few words.  
25 It made it difficult for him to earn a living and to provide

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1 for his wife and daughter. Shao Jun himself is a smoker and  
2 sometimes he helped his construction co-workers buy Chinese  
3 cigarettes. This is how he met someone who told him how he  
4 could sell untaxed cigarettes to earn money. This contact put  
5 him in touch with someone located in China who provided Shao  
6 Jun with the addresses the government speaks about where they  
7 would ship the cigarettes. This operation was really as simple  
8 as it gets. It was a one-man operation. We picked up the  
9 boxes. He stored the boxes. He broke down the boxes to the  
10 cartons. He delivered the boxes. He got paid. And he sent  
11 some money back to China and he kept some. This work was far  
12 from glamorous and it was also inconsistent.

13 We submit to you that although the government says  
14 that this conduct might have started in 2015, it certainly  
15 wasn't consistent and he certainly didn't profit to the tune of  
16 hundreds of thousands of dollars. Again, he knew what he was  
17 doing was wrong but in his mind he was only providing a less  
18 expensive product to people like him, people who were smokers  
19 and were going to buy cigarettes no matter what they cost. It  
20 was not until his arrest in this case that he recognized the  
21 actual harm involved, not only the loss to the state for its  
22 tax revenue but for the promotion of smoking.

23 Now in addition to the mitigating factors and the  
24 evidence of Shao Jun's good character, we do believe that the  
25 loss amount in this case severely overstates the punishment

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1 commensurate with his culpability. Now unlike the government  
2 suggests and as the Court now realizes, we're not challenging  
3 the loss calculation here. What we're saying is really  
4 something different. We're saying that it is not an  
5 appropriate proxy for his culpability. Again, this is not an  
6 amount that he profited. We've gotten to know him. We have  
7 seen his home. This is a modest man. This is not a man who  
8 was making hundreds of thousands of dollars out of this  
9 exercise.

10 The loss amount here is particularly steep considering  
11 the extremely high tax amount that applies to cigarettes and  
12 this is due when you take into account well-known domestic  
13 brands but it's arguably proportionately even steeper when  
14 applied to China's brand that these cigarettes were and  
15 considerably the means of the people who would purchase them.

16 We want to point out for the Court also that there was  
17 no gang or organized crime activity here. I think your Honor  
18 was picking up on that in some of our questions to the  
19 government. I mean, far from a cartel. To the extent that the  
20 government refers to Shao Jun and his co-defendant as an taxed  
21 cigarette trafficking organization, we submit that this implies  
22 something more nefarious and more organized than what actually  
23 happened here. There was no hierarchy and again, no gang or  
24 organized crime activity.

25 I don't want to speak for the rest of the

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1 co-defendants who I don't know to the extent that I now know of  
2 Shao Jun and his family but these are simple people who  
3 struggle to make a living who are immigrants, who struggle to  
4 have survive in a country where they may not speak the language  
5 and they struggle to find jobs and where culturally people  
6 smoke. And although Shao Jun knew what he was doing was wrong,  
7 he definitely did not understand or contemplate the full  
8 ramifications of his actions.

9           There is a lot of case law and other literature that  
10 supports the point that where the loss amount drives the  
11 guidelines to such an extent as it does here, the sentencing  
12 judge should instead rely more heavily on and look to the  
13 Section 3553(a) factors. We've cited some of that case law in  
14 our submissions and we respectfully submit as we do in our memo  
15 that a sentence anywhere close to the guidelines in this case  
16 would result in an utter travesty of justice.

17           It is for these reasons that we respectfully urge the  
18 Court to impose a non incarceratory sentence here that would be  
19 a sentence of probation with special conditions as set forth in  
20 Section 5B1.3 of the guidelines manual. That can include a  
21 significant period of home detention or if your Honor is so  
22 inclined, community confinement to a CTC. There are other  
23 tools and conditions within that section that we submit would  
24 be more appropriate here than a jail sentence.

25           As we have described in our written submission and as

1 the family has pleaded and explained, Shao Jun is needed at  
2 home so that at least one of Celine's parents can care for her  
3 while the other works. As much as this family will do anything  
4 or Shao Jun and his wife and daughter -- and they've done a  
5 lot -- they have a lot on their own plates and their own  
6 responsibilities and jobs and family to care for.

7 As far as deterrence, Shao Jun is genuine when he  
8 explained how much shame his actions and his arrest in this  
9 case have brought to him and his family, and his wife, who  
10 doesn't speak English, now needs to work and support their  
11 family and their child, we respectfully submit, that a  
12 significant period of home confinement and the other conditions  
13 that the Court deems appropriate will be enough of a deterrent  
14 and punishment. It will also allow Shao Jun's wife to work and  
15 be their primary source of income while he cares for their  
16 child which has been hair roles since his arrest in this case  
17 and while they wait to learn whether he will ultimately be  
18 deported.

19 THE COURT: Thank you.

20 A couple of follow-up questions just in part based on  
21 things that Ms. Espinosa, I had spoke other about.

22 First, do you dispute her characterization of how long  
23 the offense was going on? In other words, the government's  
24 position is that there's evidence that it began in or about  
25 2015.

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1 MS. SACKS: Judge, to the extent that it started, that  
2 he engaged in conduct as far back as 2015, was very  
3 intermittent. As I said, he started certainly smally with this  
4 and it was not consistent throughout that entire time.

5 THE COURT: All right. And I'll ask Ms. Espinosa to  
6 address these two things as well. My understanding is that the  
7 government found evidence that he had cigarettes sent to 24  
8 different addresses; is that correct?

9 MS. SACKS: Yes, judge. These were, as we explained,  
10 as I explained, these were the addresses that were given to him  
11 by a source in China where he could pick up the cigarettes to  
12 then break them up to down out of the boxes and sell them to  
13 the retailers.

14 THE COURT: But I suppose it could be inferred from  
15 the fact that there were 24 separate addresses that that was a  
16 means of avoiding detection and being caught doing this is that  
17 a fair inference?

18 MS. SACKS: You know, judge, I really don't know.  
19 Again, certainly, possibly. But those were, he was in some  
20 ways a bit of a soldier that he was told where to go by the  
21 people in China. But we by no means suggest that he did not  
22 know what he was doing or that what he was doing was illegal.

23 THE COURT: Last question is, there's a suggestion in  
24 your submissions and in the PSR that he could be subject to  
25 immigration consequences including removal based on this. But

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1 do you have any more detailed information on that score  
2 including, for instance, whether the sentence imposed would  
3 affect that analysis?

4 MS. SACKS: If I could have just a second?

5 (Pause)

6 MS. SACKS: Judge, we've looked at it a little bit  
7 even though we're not immigration lawyers but the law is very  
8 unclear. We've certainly seen some law that suggests that  
9 confinement for more than one year could trigger deportation  
10 but we don't really have anything more definite than that as  
11 far as what the law is or how it would apply to this case.

12 THE COURT: All right. Ms. Espinosa, let me turn back  
13 to you on those two issues.

14 First, would you argue that the 24 addresses were a  
15 means of avoiding detection and is there other evidence or  
16 means that the defendant used to avoid law enforcement?

17 MS. ESPINOSA: One moment, your Honor?

18 (Pause)

19 MS. ESPINOSA: Your Honor, it's certainly the  
20 government's position that there is no other reasonable  
21 inference to draw from the fact that he was shipping the  
22 cigarettes to so many different addresses. Other than that it  
23 was to avoid detection of his activity. And certainly based on  
24 our investigation and in similar cases it is a common tactic  
25 used by people importing contraband cigarettes.



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1 THE COURT: Slow done little bit.

2 MS. ESPINOSA: I apologize, your Honor. But yes it is  
3 the government's view that that was certainly his goal with  
4 shipping to multiple addresses.

5 Additionally, it is my understanding that the  
6 defendant also when driving between locations with contraband  
7 cigarettes engaged in what could be seen as counterintelligence  
8 or evasive maneuvers to also avoid detection by law enforcement  
9 who might have been surveilling him or attempting to detect his  
10 activity

11 THE COURT: Such as?

12 MS. ESPINOSA: Taking multiple turns in order to shake  
13 off anyone who is following him and things of that nature.

14 THE COURT: All right. And do you know anything about  
15 the deportation consequences of a sentence, if any?

16 MS. ESPINOSA: Your Honor, I am not an expert in  
17 immigration law and I don't have any reason to dispute defense  
18 counsel's characterization. Otherwise I'm unclear on this  
19 point. The government doesn't have any specific information  
20 here to indicate that that particular defendant will face or  
21 not face any specific consequences.

22 I believe that it's my understanding from looking at  
23 the law that to the extent it factors into the analysis and  
24 information, while this is not a crime of moral turpitude, so I  
25 believe that does have some impact on whether deportation is

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1 mandatory or not but I don't think that I'm able to give a  
2 clear answer here.

3 THE COURT: All right. Thank you.

4 Mr. Guo.

5 MS. SACKS: Judge, just to say that certainly if he  
6 was incarcerated it could trigger an immigration hold and more  
7 incarceration.

8 THE COURT: OK. Thank you.

9 Mr. Guo, is there anything that you wish to say before  
10 I sentence you?

11 THE DEFENDANT: Honorable judge, I'm very regretful  
12 for the mistake that I have made. My action have not only done  
13 harm to the interests of the country, my actions have also done  
14 harms to my family. I'm very regretful and I am repentant.

15 All my family members, including my parents and my  
16 siblings and my wife, they feel worrisome and feel so sad about  
17 my case. My daughter is only 20-months-old and she is in need  
18 of someone to take care of her. As the pillar of this family,  
19 I feel strongly that I am responsible to provide the family --  
20 I feel so sad to think of the family might be scattered if I'm  
21 sent to jail for any lengthy time and I feel very sad about it.

22 My only hope -- and I'm pleading with your Honor -- is  
23 that you give me a chance to correct myself and please do not  
24 send knee to jail. I'm ready to accept any punishment you  
25 impose on me. In the future days I will make effort to do

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1 things that will be beneficial to the country.

2 I am very thankful for you listening to me.

3 THE COURT: Thank you very much, Mr. Guo.

4 Counsel, is there any reason that sentence should not  
5 be imposed at this time?

6 MS. ESPINOSA: No, your Honor.

7 MS. SACKS: No, judge.

8 THE COURT: In imposing sentence I am required to  
9 consider the factors that are set forth in Title 18 U.S.C.  
10 Section 3553(a). In the interest of time I am not going to  
11 recite them in full but suffice it to say that I have and will  
12 consider them in imposing a sentence. Ultimately, I am  
13 required to impose a sentence that is sufficient but no greater  
14 than necessary to comply with the purposes of sentencing set  
15 forth in Section 3553(a)(2).

16 Let me start by saying that I agree with defense  
17 counsel that a guidelines sentence in this case would be quite  
18 unjust. That's not warranted, that based on the totality of  
19 circumstances it's substantially more than necessary to serve  
20 the purposes of sentencing. And in that regard I would note  
21 both the defendant's background and the selflessness that he  
22 has exhibited toward his family, the role that he plays in his  
23 family today and the impact that it would have on his family  
24 and the fact there is no organized crime or gang component here  
25 and that it is his first time and only offense as far as we

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1 know.

2 That said, I am quite torn by the question of what  
3 sentence to impose here and in particular, whether some jail  
4 time is necessary or not. I think it is a close question. And  
5 on balance, I do think that some jail time is necessary because  
6 of the seriousness of the offense, because of the length time  
7 that Mr. Guo was engaged in the offense, because of the amount  
8 of taxes involved, even if I agree that there is some problems  
9 with inherent in the loss amount driving the guidelines, I  
10 certainly think that his is relevant in understanding the scale  
11 and scope of the offense.

12 I think that when push comes to shove it is just too  
13 much conduct, too long conduct and too serious conduct not to  
14 impose some jail time but I certainly think that nothing even  
15 close to the guidelines is appropriate here. Instead, I think  
16 some sort of split sentence with a short amount of jail time  
17 and some home detention where Mr. Guo can tend to his family  
18 and support his family is the appropriate sentence.

19 So with that, I will state the sentence that I intend  
20 to impose and would ask Mr. Guo to please rise.

21 Mr. Guo, it the judgment of this Court that you're  
22 remanded to the custody of the Bureau of Prisons for a period  
23 of six months to be followed by a period of three years of  
24 supervised release with a special condition of six months home  
25 detention with location monitoring.

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1           During your term of supervised release you'll be  
2 subject to the following mandatory conditions:

3           You shall not commit another federal, state or local  
4 crime.

5           You shall not illegally possess a controlled  
6 substance.

7           You shall refrain from any unlawful use of controlled  
8 substance and submit to one drug test within 15 of your release  
9 on supervised release, and at least two periodic drug tests  
10 thereafter as determined by probation.

11           You shall cooperate in the collection of DNA as  
12 directed by probation.

13           You shall satisfy your financial obligations that I  
14 will discuss shortly, including complying with any installment  
15 payment schedule that I impose.

16           In addition, the standard conditions of supervised  
17 release which are set forth in the presentence report and which  
18 will be set forth in the judgment shall apply. That includes:

19           You shall not possess a firearm or destructive device.

20           You shall report to the probation office in the  
21 judicial district where you are authorized to reside within 72  
22 hours of your release from custody.

23           Finally, you must meet the following special  
24 conditions:

25           First, you shall obey the immigration laws and comply

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1 with the directives of immigration authorities.

2 Second, you shall comply with the conditions of  
3 location monitoring for a period of six months home detention,  
4 which program may include electronic monitoring or voice  
5 identification. During that time you will remain at your place  
6 of residence except for employment an other actives as approved  
7 by your probation officer. You will maintain a telephone at  
8 your place of residence without Call Forwarding, modem, Caller  
9 ID or Call waiting for that period. Portable cordless  
10 telephones are not permitted. Location monitoring shall  
11 commence on a date to be determined by the probation officer.

12 You shall pay the cost of location monitoring on a  
13 self-payment or a co-payment basis as directed by probation.

14 You shall submit your person, residence, place of  
15 business, vehicle or any property or electronic device under  
16 your control to a search on the basis that the probation  
17 officer has a reasonable belief that contraband or evidence of  
18 a violation of the terms of supervised release may be found.  
19 That search must be conducted at a reasonable time and in a  
20 reasonable manner. Failure to submit to a search may be  
21 grounds for revocation and you shall inform any other residents  
22 that the premises may be subject to search pursuant to that  
23 condition.

24 You shall provide the probation officer with access to  
25 any requested financial information unless you have satisfied

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1 your financial obligations.

2 You shall not incur any new credit charges or open  
3 additional lines of credit without the approval of the  
4 probation officer unless you have satisfied your financial  
5 obligations.

6 You shall be supervised in the district of your  
7 residence.

8 I am not going to impose a fine because I find that  
9 you would not be able to pay one and it would interfere with  
10 the restitution payments.

11 It is further the judgment of this Court that you are  
12 to pay restitution in the amount of \$3,240,608. You shall do  
13 so in accordance with Section 3663(a) of Title 18 of the U.S.C.  
14 payable to the Clerk of the United States District Court for  
15 this district for disbursement to the victims set forth on page  
16 23 of the presentence report.

17 The government will submit an attached schedule to be  
18 attached to the order that I will docket.

19 The requirement of interest will be waived in light of  
20 your financial circumstances. If you are engaged in a BOP non  
21 UNICOR work program, you shall pay \$25 per quarter toward the  
22 criminal financial penalties. However, if you participate in  
23 the BOP's UNICOR program as a grade one through four, you shall  
24 pay 50 percent of your monthly earnings toward the criminal  
25 financial penalties consistent with BOP regulations. Any

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1 payment made that is not a payment in full shall be divided  
2 proportionately among the persons named.

3 The restitution shall be paid in monthly installments  
4 of ten percent of gross monthly income over a period of  
5 supervision to commence 30 days after your release from  
6 custody.

7 You shall notify the Court and probation department of  
8 any material change in your economic circumstances that might  
9 affect your ability to pay restitution.

10 I am imposing the mandatory special assessment of \$100  
11 which shall be due and payable immediately and consistent with  
12 the consent preliminary order of forfeiture that I will enter  
13 as well.

14 I finally order you to forfeiture to the United States  
15 \$810,152 in United States currency which represents the  
16 proceeds you obtained directly or indirectly as a result of  
17 your criminal activity.

18 Does any either counsel have any legal reason why the  
19 sentence should not be imposed as stated?

20 MS. ESPINOSA: No, your Honor.

21 MS. SACKS: No, judge.

22 THE COURT: Sentence as stated is imposed.

23 Although it gives me no pleasure to send anybody to  
24 jail and particularly where it imposes as it will here on the  
25 defendant's family, I do think it is necessary, at least for a



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1 little bit, given for the reasons that I stated before.

2 I do find the sentence is sufficient but no greater  
3 than necessary to satisfy the sentencing purposes set forth in  
4 Section 3553(a)(2), including the need to promote respect for  
5 the law, to provide just punishment for the offense, to afford  
6 adequate deterrence and to protect the public from further  
7 crimes of the defendant, of which I hope I can believe Mr. Guo  
8 when he says there will be none.

9 Ms. Sacks, any request with respect to a designation  
10 location?

11 MS. SACKS: Judge, we would ask that he be designated  
12 to something like the Otisville camp or a similar location  
13 close to the New York area so that his family can visit him.

14 THE COURT: All right. I will make that  
15 recommendation to the Bureau of Prisons.

16 Ms. Espinosa, any objection to allowing the defendant  
17 to voluntarily surrender?

18 MS. ESPINOSA: No, your Honor.

19 THE COURT: All right. I will allow him to do that as  
20 well.

21 In particular, Mr. Guo, you are to surrender to the  
22 United States -- sorry -- for service of your sentence at the  
23 institution designated by the Bureau of Prisons.

24 Let me give you date for that. Before two p.m. on  
25 December 13, 2019. If you do not receive a designation by

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1 then, and I expect you will, then you are to surrender to the  
2 Metropolitan Correctional center here in the Southern District  
3 of New York in Manhattan.

4 When you are released and on supervised release you  
5 will be able to work and you'll be able to care for your family  
6 and I hope you are able to with the support of probation and  
7 with the support of your clearly, very supportive family, able  
8 to put this chapter behind you and dedicate yourself to helping  
9 your family in a law-abiding way.

10 I hope that you don't end up back in courtroom. I can  
11 certainly assure you that if you do, if you violate the terms  
12 of your supervised release that I will not look kindly upon  
13 that you've received a very big break from the guidelines today  
14 and I certainly think that is warranted and justified but if  
15 you don't live by your words and you don't put this behind you  
16 and you don't do what you can to give back to your family and  
17 this country, then you are certainly not going to find me as  
18 merciful the next time around.

19 Ms. Espinosa, are there open counts?

20 MS. ESPINOSA: Yes, your Honor. The government moves  
21 to dismiss the open counts against the defendant.

22 THE COURT: They're dismissed.

23 At this time, Mr. Guo, to the extent that you did not  
24 give up your right to appeal through your guilty plea and the  
25 plea agreement that you entered into in connection with your

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1 plea, you do have the right to appeal. Any appeal must be  
2 filed within 14 days of entry of the judgment of conviction.  
3 And if you cannot afford to pay the cost of an appeal, you may  
4 apply for leave to appeal in forma pauperis.

5 Anything else?

6 MS. ESPINOSA: No. Thank you, your Honor.

7 MS. SACKS: Thanks, judge. No.

8 THE COURT: All right. In that case, I wish Mr. Guo  
9 and particularly, his family best of luck. I'll stay on the  
10 bench but the matter is adjourned.

11 Thank you very much.

12 (Adjourned)